

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LUIS DE LA CRUZ, individually and)
on behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
METRO LINK IL, LLC)
)
)
Defendant.)

Case No.: 1:17-cv-8661

COMPLAINT

NOW COMES Plaintiff LUIS DE LA CRUZ (“Luis” or “Plaintiff”) on behalf of himself and all other plaintiffs similarly situated, by and through his attorneys, and for their Complaint against Defendant METRO LINK IL, LLC (“Metro Link”), a limited liability company, as follows:

Nature of the Action

1. This civil action is brought by the above-named plaintiff who brings this class action claim for overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) pursuant to 29 U.S.C. §216(b), and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS § 105 *et seq* and Illinois Wage Payment and Collections Act (“IWPCA”) 820 ILCS 115 *et seq* pursuant to Fed. R. Civ. Pro. 23.

Parties

2. Plaintiff sold cellular phones as an employee of Metro Link starting in October 2014.

3. Defendant Metro Link LLC is an Illinois limited liability company, headquartered at 910 B N. Farnsworth Avenue. in Aurora, Illinois. Defendant owns and operates a number of cell phone retail stores.

4. Defendant owns and operates at least five such retail stores. Upon information and belief Defendant owns and operates as many as thirty stores in Illinois.

5. At all material times hereto, Metro Link IL, LLC was the “employer” of Plaintiff as defined in the FLSA, 29 U.S.C. § 203(d), the IMWL, and the IWPCA, 820 ILCS § 115/2.

6. At all material times hereto, Plaintiff was employed by Metro Link IL, LLC as “employee” within the meaning of § 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1) and within the meaning of the IMWL and the IWPCA, 820 ILCS § 115/1 *et seq.*

Jurisdiction and Venue

7. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. § 1337 and by 29 U.S.C § 216(b).

8. From at least 2013 to the present, Metro Link IL, LLC was an enterprise engaged in interstate commerce or in the production of goods for commerce as defined in 29 U.S.C. § 203(r) and 203(s).

9. The annual gross sales volume of Metro Link IL, LLC was in excess of \$500,000.00 per year since 2014.

10. Venue is proper in this Judicial District as all the events arising out of this case arose in this Judicial District.

Factual Background

11. Plaintiff worked for Defendant within the past three years.

12. Plaintiff was paid on an hourly basis and also earned commissions.

Commissions and Regular Rate of Pay

13. At all relevant times Defendant not include earned commissions when calculating Plaintiff's regular rate of pay for overtime purposes.

14. Plaintiff has worked overtime and earned commissions during the same pay period, including for example, the following weeks 4/22/2016, 6/26/2016, 12/30/2016 and 4/21/17.

15. Because of this, Defendant did not pay Plaintiff proper overtime wages of one and one-half times his regular rate of pay for all hours worked above forty hours in a work week.

16. Defendant did not issue Plaintiff paystubs until the middle of 2015.

Unauthorized Deductions

17. Defendant made deductions from Plaintiff's earned wages.

18. Plaintiff did not authorize these deductions in writing from his earned wages at the time each deduction was made.

Unpaid Time

19. Plaintiff was not compensated for time traveling between store locations when he was scheduled to work multiple locations. This time should have been included in determining the number of overtime hours that he worked.

20. Plaintiff was not compensated for time spent in the morning when he had to go to the Defendant's headquarters to obtain a key from the District Manager and then travel to the store he was scheduled to work at. This occurred every day Plaintiff worked until some time in 2016.

21. Plaintiff was not compensated for time in the evenings Plaintiff was required to go from his scheduled store to the Defendant's headquarters to drop off daily deposit and key with the District Manager. This occurred every day Plaintiff worked until some time in 2016.

22. Plaintiff was not compensated for time traveling to and attending mandatory meetings at Defendant's headquarters. Meetings occurred two to three times per month and would last between one-and-one-half to two hours.

23. All the above policies and practices occurred to himself and other similarly situated employees.

24. The named Plaintiff and similarly situated employees were not exempt from the overtime provisions of the FLSA.

25. Plaintiff performed his job responsibilities for Defendant in the State of Illinois.

CLASS AND COLLECTIVE ALLEGATIONS

26. Plaintiff seeks to maintain this suit as a Collective pursuant to 29 U.S.C. § 216 (b) and as a Class pursuant to Fed. R. Civ. Pro on behalf of himself and all other non-exempt hourly employees who were not fully compensated for overtime hours, were not paid all wages owed and were subject to unauthorized deductions from pay.

27. Plaintiffs and other similarly situated current and former employees in the asserted class regularly worked over 40 hours per week but were not paid their overtime hours at one and one-half times their regular rate of pay.

28. Plaintiff and asserted members of the Collective and Class are similarly situated because, *inter alia*, they all were not paid the required overtime rate of one and one-half times their regular rate of pay for all work in excess of 40 hours per week, as well as, worked additional uncompensated hours and had unauthorized deductions from wages and had such rights undermined and neglected by Defendant's unlawful practice and polies.

29. At all times material to this Complaint, Defendant failed to comply with the FLSA and IMWL in that Plaintiffs and those similarly situated performed services for Defendant for which no provision was made by Defendant to pay Plaintiffs and similarly situated employees for the correct amount of time actually worked.

30. Defendant has encouraged, permitted, and required Plaintiffs to work without properly paying them for all time worked.

31. Plaintiff brings the FLSA claims a collective action under 29 U.S.C. § 216(b), and the remaining claims as a class action under Federal Rule of Civil Procedure 23.

32. There are other current and former employees within the asserted class during the material time who are similarly situated to Plaintiff. With such numbers of similar claims for unpaid compensation, a collective action and a class action are superior procedures for adjudicating such claims. Plaintiff requests that the Court authorize and supervise notice to the members of the asserted classes so that all claims may be resolved efficiently in a single proceeding.

33. The records, if any, should be in the custody or control of Defendant concerning the members of the asserted class and collective, the number of hours actually worked by Plaintiff and all other similarly situated employees, and the compensation actually paid, or not paid, to such employees.

34. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiff's counsel is competent and experienced in litigating large wage and hour class and collective actions.

COUNT I – FAIR LABOR AND STANDARDS ACT
(Plaintiffs Individually and on Behalf of All Similarly
Situated Pursuant to 29 U.S.C. § 216(b))

35. Plaintiffs hereby realleges and incorporates paragraphs 1 through 34 of this Complaint, as if fully set forth herein.

36. At all relevant times, Defendant employed and/or continued to employ Plaintiffs and each member of the proposed class of hourly employees within the meaning of the FLSA.

37. Under the FLSA, Plaintiff and Collective were entitled to be paid at the overtime rate by Defendant for each hour worked in excess of 40 hours each work week at one and one-half times their regular rate.

38. Defendant did not include commissions when calculating the regular rate of pay for overtime purposes for its employees.

39. This resulted in employees being paid at a rate less than one and one-half times their regular rate of pay for hours worked over forty in a work week, in violation of the FLSA.

40. Upon information and belief, Defendant's practices were not based upon Defendant's review of any policy or publication of the United States Department of Labor and therefore was willful and deliberate.

41. Due to Defendant's violations of the FLSA, the FLSA Class is entitled to recover from Defendant their unpaid compensation, liquidated damages, reasonable attorney's fees, and the costs of this action, pursuant to 29 U.S.C. §216(b).

WHEREFORE, the Plaintiff requests the following relief, individually and on behalf of similarly situated employees:

- A. Certification of a Class of similarly situated Plaintiffs;
- B. A declaratory judgment that Defendant willfully violated the provisions of the FLSA as to the Plaintiffs and the Class

C. Compensation in the amount of the owed wages for all time worked by Plaintiff and the Class;

D. An additional amount equal as liquidated damages;

E. Prejudgment interest;

F. A judgment to Plaintiffs for reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b); and

G. Such other and further relief as this Court deems appropriate and just.

COUNT II – ILLINOIS MINIMUM WAGE LAW
(Plaintiffs Individually and on Behalf of All Similarly
Situated Pursuant to Fed. R. Civ. Pro. 23)

42. Plaintiffs hereby realleges and incorporates paragraphs 1 through 41 of this Complaint, as if fully set forth herein.

43. Under the IMWL, Plaintiff and Collective were entitled to be paid at the overtime rate by Defendant for each hour worked in excess of 40 hours each work week at one and one-half times their regular rate.

44. Defendant did not include commissions when calculating the regular rate of pay for overtime purposes for its hourly employees.

45. Plaintiff was regularly permitted, encouraged and/or required to work in excess of 40 hours per week but was not compensated at the required one and one-half times his regular rate for such overtime work.

46. This resulted in employees being paid at a rate less than one and one-half times their regular rate of pay for hours worked over forty in a work week, in violation of the IMWL.

47. By failing to pay overtime compensation due to Plaintiff, Defendant willfully, knowingly, and/or recklessly violated the IMWL which requires overtime compensation of one and one-half times the regular rate to be paid.

WHEREFORE, Plaintiff requests the following relief individually and on behalf of similarly situated employees:

- A. Certification of a class of similarly situated Plaintiffs;.
- B. A declaratory judgment that Defendant violated the minimum wage provisions of the IMWL as to the Plaintiff and the Class;
- C. A declaratory judgment that Defendant's violations of the IMWL were willful;
- D. A judgment to Plaintiff and the Class in the amount of unpaid wages;
- E. A judgment to the Plaintiff and the Class of punitive damages as provided by IMWL;
- F. A judgment to Plaintiff and those similarly situated of reasonable attorneys' fees and costs incurred in filing this action; and
- G. Such other and further relief as this Court deems appropriate and just

COUNT III – ILLINOIS WAGE PAYMENT AND COLLECTIONS ACT
(Plaintiff Individually and on Behalf of All Similarly
Situated Employees Pursuant to Federal Rule of Procedure 23)

48. Plaintiff hereby realleges and incorporates paragraphs 1 through 47 of this Complaint, as if fully set forth herein.

49. The foregoing actions of Defendant constitutes violations of the Illinois Wage Payment and Collections Act (IWPCA). Defendant's actions were willful and not in good faith.

50. This count arises from Defendant's violation of the IWPCA, 820 ILCS 115. 820 ILCS §115/4 provides in part that "[a]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned."

51. Defendant permitted, encouraged, and/or required Plaintiff and similarly situated employees to work uncompensated hours.

52. Defendant failed to pay Plaintiff and others similarly situated for time picking up and dropping off keys and deposits, travel between stores, and travel to mandatory meetings. Additionally, Defendant failed to pay Plaintiff and the class for the time attending mandatory meetings.

53. Additionally, 820 ILCS 115/9 provides as follows:

Except as hereinafter provided, **deductions by employers from wages or final compensation are prohibited** unless such deductions are (1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; (4) made with the express written consent of the employee, given freely at the time the deduction is made; (5) [made by certain governmental entities]. (emphasis added)

54. Defendant violated the IWPCA, 820 Ill. Comp. Stat. 115/1 *et seq.*, by failing to pay employees for all time worked.

55. Defendant further violated the IWPCA by making unauthorized deductions from the wages of Plaintiff and other similarly situated employees.

56. Plaintiffs seek all unpaid wages as well as reimbursement for all unlawful deductions taken by Defendant from their pay.

WHEREFORE, Plaintiff request the following relief, individually and on behalf of similarly situated employees:

- A. Certification of a class of similarly situated Plaintiffs;
- B. A declaratory judgment that Defendant violated the IWPCA as to the Plaintiff and the Class;
- C. A declaratory judgment that Defendant's violations of the IWPCA were willful;

D. A judgment to Plaintiff and the Class in the amount of unpaid wages and all unauthorized deductions;

E. A judgment to Plaintiff and the Class of punitive damages as provided by IWPCA.

DEMAND FOR JURY TRIAL

Dated: November 30, 2017

Respectfully submitted,
Luis De La Cruz

By: /s/ John Kunze
One of Plaintiff's attorneys

David J. Fish
John Kunze
Kim Hilton
THE FISH LAW FIRM, P.C.
200 E. 5th Ave., Suite 123
Naperville, IL 60563
T: 630-355-7590
F: 630-778-0400
dfish@fishlawfirm.com